UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,471	04/26/2001	Loren Christensen	33556	8113

116 7590 08/09/2005

PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER	
CHANKONG, DOHM	
ART UNIT	**PAPER NUMBER**
2152	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/843,471	CHRISTENSEN, LOREN	
	Examiner	Art Unit	
	Dohm Chankong	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 13-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 13-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1> This action is in response to Applicant's amendment and remarks. Claims 1-8 and 13-16 are presented for further examination.

2> This is a final rejection.

Response to Arguments

3> Applicant's arguments with respect to claims 1-8 and 13-16 have been considered but are moot in view of the new ground(s) of rejection necessitated by Applicant's amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4> Claims 1, 4, 5, 8, 13, 14 and 16 are rejected under 35 U.S.C § 102(e) as being anticipated by Chang et al, U.S Patent Publication No. 2002|0112182 ["Chang"].

5> As to claim 1, Chang discloses a network topology distributed discovery method, leveraging functionality of a high-speed communications network, comprising the steps of:

at each of a plurality of data collection node computers being proximal to a network, polling one or more network devices in the network [Figure 2D | Figure 5A | 0016, 0017, 0062, 0088, 0089, 0132, 0133 where : the gateways correspond to data collection nodes and proximal to the "endpoint computers"], including:

querying one or more network devices for which the data collection node computer is responsible [0017, 0062, 0089, 0090 where : the gateways can poll the endpoint computers for which they are mapped], and

creating a distributed network topology database based on record of the querying [0088, 0089, 0092]; and

importing the distributed network topology database onto at least one performance monitor service computer so as to enable network management [0089, 0090 where : topology information gathered from the one or more IP drivers is sent to a Topology service 506 and database 512 that enables network management].

6> As to claim 4, Chang discloses the method of claim 1, further including the step of connecting at least one performance monitor client computer to the network so as to communicate remotely with the performance monitor server computers [Figure 5a «item 524» | 0091 where : Chang does not explicitly disclose connecting a client computer. However, this is inherent in Chang's system as an administrator or user must use some sort of computing device to access the management system].

7> As to claim 5, Chang discloses a network topology distributed discovery system, leveraging functionality of a high-speed communications network, comprising:

a plurality of data collection node computers for discovering network devices in a network, the data collection node computers being proximal to the network [Figure 2D | Figure 5A | 0016, 0017, 0062, 0088, 0089, 0132, 0133], each including:

at least one discovery engine instances for polling one or more network devices for which the data collection node computer is responsible [0092, 0132 where : Chang's IP drivers correspond to engine instances],

a distributed network topology database is created based on record of the polling [0088, 0089, 0092]; and

at least one performance monitor server computer having imported the distributed network topology database whereby network management is enabled [0089, 0090].

8> Claim 8 is similar in scope to claim 4 and therefore is rejected for the same reasons provided in above for claim 4.

9> As to claims 13 and 14, as they are merely claims to a product that implements the steps of the method of claims 1 and 2, respectively, they do not teach or further define over the claimed limitations. Therefore, claims 13 and 14 are rejected for the same reasons set forth for claims 1 and 2, supra.

10> As to claim 16, as it is merely a claim to a product that implements the step of the method of claim 4, it does not teach or further define over the claimed limitation. Therefore, claim 16 is rejected for the same reasons set forth for claim 4, supra.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11> Claims 2 and 6 are rejected under 35 U.S.C § 103(a) as being unpatentable over Chang.

12> As to claim 2, Chang discloses the method of claim 1 but does not expressly disclose that the polling step includes implementing parallel processing of the distributed network topology. However, Chang discloses (and as can be seen in Chang's figure [Figure 2A]) that separate gateways are responsible for processing their own endpoints. And while not expressed by Chang, it would have been obvious to one of ordinary skill in the art that this structure enables parallel processing of the endpoints (each gateway can process their endpoints in a parallel manner).

13> As to claim 6, Chang teaches the system of claim 5, wherein at least one discovery engine instance is located on the data collection node computers on a ratio of one engine

instance to one central processing unit whereby the total number of engine instances is at least two [0092, where : the plurality of IP drivers correspond to engine instances] but does not expressly disclose parallel processing of the distributed network topology database. However, Chang is directed towards a distributed method for polling and discovering devices (thus, the multiple IP drivers). Similarly to claim 2, it would have been obvious to one of ordinary skill in the art that Chang's multiple discovery engine instances would allow Chang to perform parallel processing of his endpoints.

14> Claims 3, 7 and 15 are rejected under 35 U.S.C 103(a) as being unpatentable over Chang in view of Crooks, U.S Patent Publication No. 2002/0055988 A1 [Crooks].

15> As to claim 3, Chang does not disclose a vendor specific discovery subroutine that is launched upon detection by the system of a non-MIB II standard device so as to query the vendor's private MIB using a vendor specific algorithm.

16> Crooks teaches a system wherein a vendor specific discovery subroutine is launched upon detection by the system of a non-MIB II standard device so as to query the vendor's private MIB using a vendor specific algorithm [0026, 0027 where: Crooks' discloses utilizing standard MIBs to recognize devices in addition to private MIBs for non-standard devices. Crooks also discloses obtaining the private MIBs resident on the device which is comparable to an algorithm]. One would have been motivated to incorporate Crooks' private MIB

functionality into Chang to allow manufacturers to implement their own information bases for recognizing their devices in the network.

17> Claim 7 is similar in scope to claim 3 and therefore is rejected for the same reasons provided in above for claim 3.

18> As to claim 15, as it is merely a claim to a product that implements the step of the method of claim 3, it does not teach or further define over the claimed limitations. Therefore, claim 15 is rejected for the same reasons set forth for claim 3.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

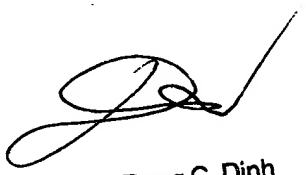
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dohm Chankong whose telephone number is (571)272-3942. The examiner can normally be reached on 8:30AM - 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DC



Dung C. Dinh
Primary Examiner